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DAVID H. YAMASAKI
Clerk of the Superior Court of the State of California
Superior Court of the County of Santa Clara
DEPUTY

ATTORNEYS FOR PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

PROVIEW ELECTRONICS CO. LIMITED,
and PROVIEW TECHNOLOGY, INC.

No. **112CV219219**

Plaintiffs,

vs.

APPLE INC. and IP APPLICATION
DEVELOPMENT LIMITED, and DOES 1-
25

Defendants

COMPLAINT FOR FRAUD -
INTENTIONAL
MISREPRESENTATION; FRAUD -
CONCEALMENT; FRAUDULENT
INDUCEMENT; UNFAIR
COMPETITION.

1 Plaintiffs Proview Electronics Co., Ltd. and Proview Technology, Inc. (collectively
2 **“Proview”**) hereby allege:

3
4 **I. THE PARTIES**

5 1. Plaintiff Proview Electronics Co., Ltd. (**“Proview Taiwan”**) is a Taiwanese
6 corporation with its principal place of business at 20F., No.1, Baosheng Rd., Yonghe City,
7 Taipei County 234, Tai-wan, Republic of China

8 2. Plaintiff Proview Technology, Inc. (**“Proview USA”**) is a California
9 corporation with its principal place of business at 3191 W. Temple Avenue, Pamona, CA
10 91768.

11 3. Defendant Apple Inc. (**“Apple”**) is a corporation organized and existing
12 under the laws of the State of California and has its principal place of business at One
13 Infinite Loop, Cupertino, CA 95014. Apple may be served through its registered agent C T
14 Corporation System at 818 W Seventh Street, Los Angeles, CA 90017.

15 4. Upon information and belief, Defendant IP Application Development
16 Limited (**“IPADL”**) is a corporation organized and existing under the laws of England
17 with its principal place of business at 3rd Floor, 28 Ely Place, London EC1N6AA, United
18 Kingdom.

19 5. The identities of Does1– 25 are not presently known to Plaintiff sat this
20 time. Plaintiff believes that information obtained through discovery will lead to the
21 identification of these Doe Defendants’ true names.

22 6. Apple, IPADL and Does 1-25 are herein collectively referred to as
23 **“Defendants.”**

24 **II. JURISDICTION AND VENUE**

25 7. This Court has jurisdiction over all causes of action asserted in this
26 Complaint pursuant to the California Constitution, Article VI, § 10 and the California Code
27 of Civil Procedure § 410.10.
28

1 8. Venue is proper in this Court pursuant to California Code of Civil
2 Procedure §§ 395 and 395.5 because all the Defendants reside or do business in the County
3 of Santa Clara.

4 **III. FACTUAL BACKGROUND**

5 **A. Proview develops and markets a portable-touchscreen device called the iPad.**

6 9. Proview International Holdings Limited, the parent company of the
7 Plaintiffs, was one of the top five computer monitor manufacturers in the world. It is listed
8 on the Hong Kong Stock Exchange ("HKSE") and has operations and offices located all
9 over the world, including Taiwan, mainland China, Hong Kong, England, and parts of
10 Europe.

11 10. In the late 1990s there was a trend towards the creation of internet
12 appliances, which were consumer devices whose main function was to provide access to
13 the internet and email.

14 11. In response to this trend, Proview International Holdings began jointly
15 developing an internet appliance called the iPad with National Semiconductor, which was
16 described as an all-in-one internet terminal with a built-in 15-inch color monitor.

17 12. In August of 2000, Proview Group and the National Semiconductor held a
18 press conference to announce and promote their iPad products on a global basis. (See
19 below.)

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22 ///

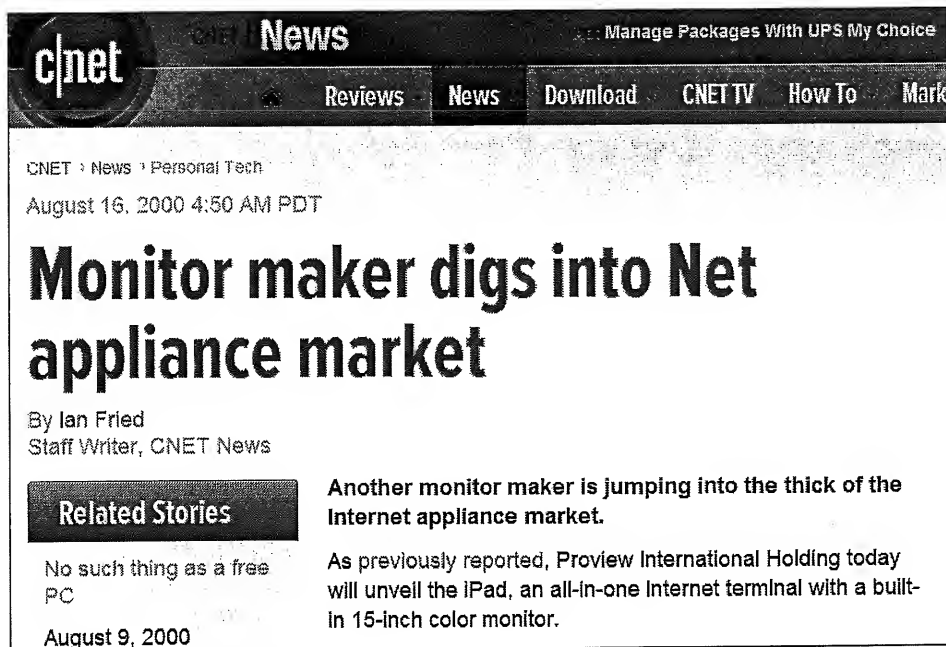
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13. Between February 24, 2000 and April 1, 2003, Proview Electronics Co. Ltd. filed for and received registered trademarks for "I - PAD," "IPAD," or "iPAD" in the European Union, South Korea, Mexico, Singapore, Indonesia, Thailand, and Vietnam.

14. In 2001, Proview Shenzhen applied to the China Trademark Office for the registration the IPAD trademark in Class 9 goods (trademark registration numbers 1590557 and 1682310).

15. In 2005, Proview entered into a strategic alliance with Motorola to develop and launch an internet television that used the iPad's core technology.

16. In mid-2008, Proview Shenzhen began cooperating with Elitegroup Computer Systems and Shenzhen Zhicheng Limited to develop an iPad all-in-one computer and netbook.

17. In the second half of 2008, Proview's top two customers, Polaroid Corporation and Circuit City, filed for bankruptcy protection. This, in combination with the global financial crisis, caused Proview's business to stagnate due to excessive

1 inventory and lack of available credit. As a result, Proview was forced to begin a
2 reorganization process.

3 **B. Apple uses deception to acquire the IPAD trademark from Proview.**

4 18. Upon information and belief, in 2009 Apple began investigating the
5 ownership trademarks associated with the name iPad in preparation for the proposed
6 announcement and launch of its iPad branded device in early 2010. This investigation
7 found that Proview had registered the IPAD trademark in a number of countries. Apple
8 decided to acquire these registered trademarks.

9 19. On August 11, 2009, Apple's lawyers at Edwards Angell Palmer & Dodge
10 incorporated a company named IP Application Development Limited in the United
11 Kingdom to serve as a "special purpose" entity whose sole purpose was to obtain the iPad
12 trademarks while obscuring the relationship between Apple and the acquisition of the
13 iPAD trademarks. The name IP Application Development Limited was deliberately chosen
14 because its abbreviation is iPAD—**IP** Application **D**evelopment.

15 20. On or about August 11, 2009, Timothy Lo, the Managing Director of
16 Proview International (UK) Limited, received a call from a man who identified himself as
17 Jonathan Hargreaves. Mr. Hargreaves was interested in a possible assignment of Proview's
18 IPAD trademarks to a company called IP Application Development Limited. It was later
19 revealed in an affidavit submitted by Apple on May 20, 2010 to Hong Kong Court that
20 "Jonathan Hargreaves" was an alias for someone named Graham Robinson:

21
22 From about 11 August 2009, IPADL's agent, Graham Robinson ("Mr. Robinson"),
23 using the pseudonym Jonathan Hargreaves, started to engage the Proview Group in
24 discussions and negotiations with a view to acquiring the Trade Marks. The Proview
25

26 21. After exchanging several emails, on August 26, 2009, Mr. Lo emailed Mr.
27 Hargreaves to ask what IP Application Development's full name and address were and
28 what the main activity of the company would be.

1 22. On August 28, 2009, Mr. Hargreaves provided Mr. Lo with the full name
2 and address of IP Application Development Limited and stated that the company was
3 going "to be involved in the computer field." Mr. Hargreaves also assured Mr. Lo that his
4 company would not be competing with Proview:

5
6 **From:** Jonathan Hargreaves [
7 **Sent:** 28 August 2009 20:08
8 **To:** Timothy Lo (Proview UK)
9 **Subject:** Re: Interest in IPAD trade marks

10 Hi Tim,

11 Thanks very much for your message. Our company is IP Application Development Limited which
12 has its address at 34 Hansells Mead, Roydon, Essex, CM19 5HZ. The intention is for the
13 company to be involved in the computer field, but since we have only just incorporated, it is pre-
14 mature to disclose more than that. In any event we will not be competing with your company.

15 23. On September 3, 2009, Mr. Lo wrote back to Mr. Hargreaves to ask (i) why
16 IP Application Development Limited wanted the trademark, (ii) whether IP Application
17 Development Limited wanted to license or purchase the trademark, (iii) how much IP
18 Application Development Limited was willing to pay, and (iv) what the terms and
19 conditions of the license or purchase would be.

20 24. On September 8, 2009, in response to Mr. Lo's email, Mr. Hargreaves
21 stated that IP Application Development Limited wanted the IPAD trademark because it "is
22 an abbreviation for the company name IP Application Development Limited" and, once
23 again, assured Mr. Lo in writing that his company would "not compete with Proview."
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From: Jonathan Hargreaves [j.hargreaves@open.ac.uk]
Sent: 08 September 2009 08:02
To: Timothy Lo (Proview UK)
Subject: Re: Interest in IPAD trade marks

Dear Tim

Thank you for your message. We would like to buy the trademark, rather than license it. We do not think this will require any complicated business terms, and could be accomplished in a simple transfer document, with payment being made from our company to Provius as soon as the papers are signed.

IPAD is an abbreviation for the company name IP Application Development Limited. This is a newly formed company, and I'm sure you can understand that we are not yet ready to publicize what the company's business is, since we have not yet made any public announcements. As I said in my last message, I can assure you that the company will not compete with Proview...

25. Knowing that Proview was having financial difficulties on October 21, 2009 Mr. Hargreaves threatened to initiate legal action to cancel Proview's trademarks, which would have caused Proview to incur significant costs in opposing such an action, if Proview did not agree to sell them.

26. After several months of additional back and forth between Proview and Mr. Hargreaves, the IP Application Development Limited entered into an agreement with Proview Electronics Co., Ltd. on December 23, 2009 to purchase all IPAD related trademarks owned by Proview Electronics Co., Ltd. for the sum of £35,000 British Sterling (the “**Agreement**”). The signatory for IP Application Electronics was Hayden Calvin Wood.

27. One month later, on January 27, 2010, Apple announced the introduction of its tablet computer called the “iPad.” Apple’s iPad went on sale in the U.S. market on April 3, 2010.

FIRST CAUSE OF ACTION
(FRAUD - INTENTIONAL MISREPRESENTATION)

28. Plaintiffs incorporate by reference paragraphs 1-27 as though set forth herein.

1 29. On or about August 10, 2009, Defendants' agent, Graham Robinson,
2 represented and stated to Plaintiff that his name was Jonathan Hargreaves. This statement
3 was false and untrue. Defendants knew this statement was false when Mr. Robinson made
4 it.

5 30. On August 28, 2009, Defendants' agent, Graham Robinson, represented and
6 stated that IP Application Development Limited would be involved in the computer field.
7 This statement was false and untrue. IP Application Development Limited was
8 incorporated by Apple a special purpose entity for the sole purpose of acquiring IPAD
9 related trademarks. Defendants knew this statement was false when Mr. Robinson made it.

10 31. On August 28, 2009, Defendants' agent, Graham Robinson, represented and
11 stated that IP Application Development Limited would not use the IPAD trademark to
12 compete with Proview. This statement was false and untrue. IP Application Development
13 Limited's sole intent was to acquire Proview's IPAD trademarks for Apple's use. Apple is
14 a competitor of Proview. Accordingly, Defendants knew this statement was false when Mr.
15 Robinson made it.

16 32. On September 8, 2009, Defendants' agent, Graham Robinson, represented
17 and stated that IP Application Development Limited would not use the IPAD trademark to
18 compete with Proview. This statement was false and untrue. IP Application Development
19 Limited's sole intent was to acquire Proview's IPAD trademarks for Apple's use. Apple is
20 a direct competitor of Proview. Accordingly, Defendants knew this statement was false
21 when Mr. Robinson made it.

22 33. On September 8, 2009, Defendants' agent, Graham Robinson, represented
23 and stated that **IP Application Development** Limited wanted the IPAD trademark because
24 it "is an abbreviation for the company name IP Application Development Limited." This
25 statement was false and untrue. IP Application Development Limited was specifically
26 incorporated as a special purpose entity to acquire Proview's IPAD trademarks for Apple
27
28

1 so that Apple could use them for its new tablet computer. Accordingly, Defendants knew
2 this statement was false when Mr. Robinson made it.

3 34. The Defendants made the foregoing misrepresentations, with the intent to
4 defraud and induce the Plaintiffs to enter into the Agreement described in paragraph 26.
5 The Plaintiffs did not know these representations were false and believed that they were
6 true. Plaintiffs acted in justifiable reliance upon the truth of the representations.

7 35. As a further direct, proximate result of Defendants' misrepresentations and
8 acts of concealments Plaintiffs will suffer substantial harm and injury under the Agreement
9 if it is not rescinded in that Plaintiffs will have been deprived of the benefit of its bargain
10 and will have obtained insufficient consideration.

11 36. As a further direct, proximate result of Defendants' misrepresentations and
12 acts of concealment, Plaintiffs have and will continue to be damaged in an amount to be
13 proven at trial.

14 37. In performing the acts set forth above, Defendants acted with oppression,
15 fraud and/or malice, entitling Plaintiffs to exemplary damages in an amount to be proven at
16 trial.

17 WHEREFORE, Plaintiffs pray for judgment as set forth below.

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19 **SECOND CAUSE OF ACTION**
20 **(FRAUD - CONCEALMENT)**

21 38. Plaintiffs incorporate by reference paragraphs 1-37 as though set forth
22 herein field.

23 39. Defendants concealed or suppressed material facts by telling Plaintiffs other
24 facts, as described above, to mislead Plaintiffs and prevent Plaintiffs from discovering the
25 concealed or suppressed facts.

26 40. The Defendants concealed or suppressed these facts with the intent to
27 defraud and induce the Plaintiff to enter into the Agreement described in paragraph 26. The
28

1 Plaintiffs did not know these representations were false and believed that they were true.
2 Plaintiffs acted in justifiable reliance upon the truth of the representations.

3 41. As a further direct, proximate result of Defendants' misrepresentations and
4 acts of concealment, Plaintiffs have and will continue to be damaged in an amount to be
5 proven at trial.

6 42. As a further direct, proximate result of Defendants' misrepresentations and
7 acts of concealments Plaintiffs will suffer substantial harm and injury under the Agreement
8 if it is not rescinded in that Plaintiffs will have been deprived of the benefit of its bargain
9 and will have obtained insufficient consideration.

10 43. In performing the acts set forth above, Defendants acted with oppression,
11 fraud and/or malice, entitling Plaintiffs to exemplary damages in an amount to be proven
12 at trial.

13 WHEREFORE, Plaintiffs pray for judgment as set forth below.

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15 **THIRD CAUSE OF ACTION**
16 **(FRAUDULENT INDUCEMENT)**

17 44. Plaintiffs incorporate by reference paragraphs 1-43 as though set forth
18 herein field.

19 45. Defendants concealed or suppressed material facts by telling Plaintiffs facts,
20 as described above, to mislead Plaintiffs and prevent Plaintiffs from discovering the
21 concealed or suppressed facts.

22 46. The Defendants concealed or suppressed these facts with the intent to
23 defraud and induce the Plaintiff to enter into the Agreement described in paragraph 26. The
24 Plaintiffs did not know these representations were false and believed that they were true.
25 Plaintiffs acted in justifiable reliance upon the truth of the representations, and their
26 consent to enter into the Agreement was therefore induced by fraud.

27 47. As a further direct, proximate result of Defendants' misrepresentations and
28 acts of concealments Plaintiffs will suffer substantial harm and injury under the Agreement

1 if it is not rescinded in that Plaintiffs will have been deprived of the benefit of its bargain
2 and will have obtained insufficient consideration.

3 48. As a further direct, proximate result of Defendants' misrepresentations and
4 acts of concealment, Plaintiffs have been and will continue to be damaged in an amount to
5 be proven at trial.

6 49. In performing the acts set forth above, Defendants acted with oppression,
7 fraud and/or malice, entitling Plaintiffs to exemplary damages in an amount to be proven at
8 trial.

9 WHEREFORE, Plaintiffs pray for judgment as set forth below.

10 **FOURTH CAUSE OF ACTION**
11 **(UNFAIR COMPETITION)**

12 50. Plaintiffs incorporate by reference paragraphs 1-49 as though set forth
13 herein.

14 51. Defendants actions as alleged above constitute common-law unfair
15 competition and unlawful and unfair business practices proscribed by California Business
16 and Professions Code section 17200, et seq.

17 52. Unless defendants are restrained by appropriate injunctive relief as
18 requested below, Plaintiffs will suffer irreparable harm for which there is no adequate
19 remedy at law. Under California Business and Professions Code § 17203, Proview is
20 entitled to preliminary and permanent injunctive relief order Defendants to cease this
21 unfair competition, as well as disgorgement of all of Defendant's profits associated with
22 this unfair competition.

23 WHEREFORE, Plaintiffs pray for judgment as set forth below.

24 **IV. PRAYER**

25 WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- 26 A. For compensatory damages according to the proof;
27 B. For punitive damages according to the proof;
28

1 C. For rescission of the Agreement entered into on December 23, 2009
2 between Proview Electronics Co., Ltd. and IP Application Development Limited;

3 D. For Defendant Apple Inc. to be preliminary and permanently enjoined from
4 using the IPAD trademarks listed in Schedule A of the Agreement entered into on
5 December 23, 2009 between Proview Electronics Co., Ltd. and IP Application
6 Development Limited;

7 E. For attorney's fees and costs; and

8 F. Such other any other and further relief as the Court may deem proper.
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10 Dated: February 17, 2012

GCA LAW PARTNERS LLP

11
12
13 By: 
14

JILL F. KOPEIKIN

15 Attorneys for Plaintiffs Proview Electronics
16 Co. Ltd, And Proview Technology, Inc.
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